

Journal of Contemporary Health Law & Policy (1985-2015)

Volume 16 | Issue 1

Article 7

1999

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Recommended Citation

Ronald S. Horn, *Cedar Rapids Community School District v. Garret F.: The Court Ruled. Congress, Now It's Your Turn*, 16 J. Contemp. Health L. & Pol'y (2000).

Available at: <https://scholarship.law.edu/jchlp/vol16/iss1/7>

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Cedar Rapids Community School District v. Garret F.: The Court Ruled. Congress, Now It's Your Turn

Erratum

147

NOTE

CEDAR RAPIDS COMMUNITY SCHOOL DISTRICT *v.* GARRET F.: THE COURT RULED. CONGRESS, NOW IT'S YOUR TURN

*Ronald S. Horn**

INTRODUCTION

Disability is a natural part of the human experience and in no way diminishes the right of individuals to participate in or contribute to society. Improving educational results for children with disabilities is an essential element of our national policy of ensuring equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities.¹

For decades, this country failed to provide adequate education for children with disabilities.² Historically, both physically and mentally disabled students were excluded from the public school system.³ An

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1. 20 U.S.C. § 1400(c)(1)(West Supp. 1998).

2. See Christine Moyles Kovan, *Disability Law—Susquenita School District v. Raelee S., Pendent Placement and Financial Responsibility Under the Individuals With Disabilities Education Act: The Third Circuit's Extension of Burlington*, 42 VILL. L. REV. 1867, 1867 (1997).

3. See LaDonna L. Boeckman, *Bestowing the Key to Public Education: The Effects of Judicial Determinations of the Individuals With Disabilities Education Act on Disabled and Nondisabled Students*, 46 DRAKE L. REV. 855, 855 (1998).

example of this harsh treatment is evidenced by the 1919 Wisconsin Supreme Court case *State Ex rel. Beattie v. Board of Education of Antigo*.⁴

In *Beattie*, a child suffered from paralysis of his limbs, excitability, uncontrollable salivation, and paralysis of his vocal cords,⁵ the latter creating a "raspy" quality to his voice.⁶ The action was brought, by Beattie's father, in municipal court where a judgment was rendered in favor of Beattie attending public school. The school board argued "that his physical condition and ailment produce[d] a depressing and nauseating effect upon the teachers and school children."⁷ On appeal, the Wisconsin Supreme Court held that "[t]he right of a child of school age to attend the public schools of this state cannot be insisted upon, when its presence therein is harmful to the best interests of the school."⁸

As state courts wrestled with the issue of educational equality for disabled children, Congress began to take legislative steps toward a solution.⁹ Yet, even though Congress enacted the Elementary and Secondary Education Act of 1965¹⁰ and the Education of the Handicapped Act of 1970,¹¹ millions of disabled children continued to lose the battle for equality in public education. Just prior to the enactment of the Education for All Handicapped Children Act of 1975 (EAHCA), Congress found that of the "more than eight million children with disabilities in the United States," more than half were not receiving ap-

4. 172 N.W. 153, 155 (Wis. 1919).

5. *See id.*

6. *See id.* at 154.

7. *Id.* at 153. Essentially, the only reasons articulated by the school board and court as to why the child's presence was "harmful" were:

... [the child] has not the normal use and control of his voice, hands, feet, and body, ... [being] slow and hesitating in speech, and [has] a peculiar high, rasping and disturbing tone of voice, accompanied with uncontrollable facial contortions, making it difficult for him to make himself understood. He also has an uncontrollable flow of saliva, which drools from his mouth upon his clothing and books, causing him to present an unclean appearance.

Id. at 154.

8. *Id.*

9. *See* Boeckman, *supra* note 3, at 859-62.

10. Pub. L. No. 89-10, 79 Stat. 27 (1965).

11. Pub. L. No. 91-230, §601-62, 84 Stat. 175 (1970)(codified as amended at 20 U.S.C. §1400-1491 (1994)).

propriate educational services.¹² It further found that approximately one million "children with disabilities in the United States were entirely excluded from the public school system."¹³ In addition, due to the absence of adequate services for children with disabilities in public education, thousands of families were forced "to find services outside the public school system, often at great distance from their residence and at their own expense."¹⁴

The Individuals With Disabilities Education Act of 1991 (IDEA) represents a decades-long culmination of legislative and judicial effort to ensure children with disabilities the right to a "free appropriate public education."¹⁵ The IDEA reorganized the structure and system of providing appropriate educational opportunities to children with disabilities.¹⁶ Until recently, the scope of services required to be provided to disabled children under the IDEA, a statute which has existed under different names for the last three decades,¹⁷ remained undefined.

*Cedar Rapids Community School District v. Garret F.*¹⁸ is the latest in a line of cases concerning the right of children with disabilities to receive a "free appropriate public education."¹⁹ At the age of four, Garret F. (Garret) suffered a spinal cord injury leaving him a quadriplegic and ventilator-dependent.²⁰ As a result of these injuries, Garret requires a personal attendant at all times in order to attend school.²¹

The issue in Cedar Rapids is not new to the courts. The controversy centers on an interpretation of the "medical services" exclusion in the "related services" provision of the IDEA. Specifically, the Court at-

12. 20 U.S.C. § 1400(b)(1)(1994).

13. 20 U.S.C. § 1400(b)(4)(1994).

14. 20 U.S.C. § 1400(b)(6)(1994). Extensive statistics regarding disabled children are listed in the Congressional finding section of the Act.

15. Haekyoung Suh, Note, *The Need for Consistency in Interpreting the Related Services Provision Under the Individuals With Disabilities Education Act*, 48 RUTGERS L. REV. 1321, 1324 (1996).

16. See H.R. Rep. 102-198 at 7, reprinted in 1991 U.S.C.C.A.N. 310, 316.

17. See Michael Dannenberg, *A Derivative Right to Education: How Standards-Based Education Redefines the Individuals With Disabilities Education Act*, 15 YALE L. & POL'Y REV. 629, 631 (1997).

18. 119 S. Ct. 992 (1999).

19. For an excellent overview of prior cases involving the Individuals With Disabilities Education Act and the approach of the various federal courts, see Suh, *supra* note 15, at 1329 (citing 343 F. Supp. at 302).

20. See *Cedar Rapids*, 119 S. Ct. at 995.

21. See *id.*

tempted to resolve whether the support services that Garret requires to attend school qualify as "related services" and should, therefore, be provided by the school district.²² Under the IDEA, services that qualify as "related services" are the responsibility of the school district.²³ However, "related services" falling within the "medical services" exclusion of the IDEA exempt the school from covering them.²⁴ Where the "medical services" exclusion applies, the burden of the costs associated with the excluded services falls on the family of the disabled child. While the Court has established tests to examine what constitutes a "related service"²⁵ and what is excluded under the IDEA, continuing litigation demonstrates the issue is not a settled one.²⁶

This Note will focus on *Cedar Rapids Community School District v. Garret F.* and analyze the "medical services" exclusion in the "related services" provision of the IDEA. Section I examines the procedural history of *Cedar Rapids* and follows its path from the Iowa Department of Education Administrative Law Judge ruling to the Supreme Court. Section II will examine the IDEA and its legislative development from the Elementary and Secondary Education Act of 1965 (ESEA). This discussion scrutinizes the cases that prompted federal statutory changes aimed toward improving the education of children with disabilities. Section III focuses on the interpretation of the "medical services" exclusion of the IDEA and the Court's prior handling of the issues presented in *Cedar Rapids*. Further, Section III explores some economic concerns associated with providing services under the IDEA and the relevance of the severity of a disability.

I. CEDAR RAPIDS V. GARRET F.

A. Challenging the School District

Cedar Rapids is the tragic story of Garret, who was severely injured

22. See *id.*

23. See *id.*

24. See 20 U.S.C. §1401(a)(17) (1994).

25. *Irving Indep. Sch. Dist. v. Tatro*, 468 U.S. 883 (1984).

26. There is a great deal of inconsistency among all the federal circuit courts on deciding what exactly a school is required to provide. For a concise discussion of the case law involving the "related services" provision of the IDEA, see generally Suh, *supra* note 15.

at the age of four during a 1987 motorcycle accident.²⁷ Garret remains a quadriplegic with serious and continuous medical needs.²⁸ The parties include the Petitioner, Cedar Rapids Community School District and the Respondent, Garret F., a minor represented by his mother, Charlene.²⁹ The most specific and critical aspects of this case are Garret's physical condition and required support services.

Garret requires urinary bladder catheterization about once a day, suctioning of his tracheostomy as needed, food and drink on a regular schedule, repositioning, ambu bag administration if the ventilator malfunctions, ventilator setting checks, observation for respiratory distress or autonomic hyperreflexia, blood pressure monitoring, and bowel disimpaction in cases of autonomic hyperreflexia.³⁰

Garret's parents and the Cedar Rapids Community School District entered into an agreement for the time period of kindergarten through fourth grade, whereby Garret's parents would provide a personal attendant to care for him during the school day.³¹ These services were funded through an insurance policy and money received from a 1.3 million-dollar settlement with the motorcycle company.³² When Garret started the fifth grade in 1993, the agreement between Garret's parents and the school district expired at which time the school district stated that it was not required to provide the one-on-one nursing services.³³

Garret administratively challenged the school district at an Iowa State Administrative Hearing in December 1994.³⁴ The Iowa Administrative Law Judge (ALJ) ruled in favor of Garret, holding Garret's continuous nursing services are "related services" under the IDEA and

27. See *Cedar Rapids Community Sch. Dist. v. Garret F.*, 106 F.3d 822, 823 (8th Cir. 1997).

28. See *id.*

29. See *id.* at 823-24.

30. *Id.* Autonomic hyperreflexia is defined as "[a] condition commonly seen in patients with injury to the upper spinal cord." *TABER'S CYCLOPEDIA MEDICAL DICTIONARY* 168 (16th ed. 1989). This involves acute hypertension, sweating, severe headache, etc. See *id.*

31. See *Cedar Rapids*, 106 F.3d at 823.

32. See *Court Considers School's Role in Caring for Disabled* (visited November 4, 1998) <<http://www.cnn.com>>.

33. See *Cedar Rapids*, 106 F.3d at 824.

34. See Brief for Petitioner at I, *Cedar Rapids Community Sch. Dist. v. Garret F.*, 106 F.3d 822 (1997).

required the school district to provide them.³⁵ The ALJ held that federal regulations³⁶ make a distinction between those services provided by a school nurse and those provided by licensed physicians.³⁷ The ALJ, relying on the U.S. Supreme Court's decision in *Irving Independent School District v. Tatro*,³⁸ ordered the Cedar Rapids Community School District to reimburse Garret's family for costs incurred during the 1993-94 school year, including continuous nursing services.³⁹

The school district appealed the Iowa Administrative Law Judge's decision to the United States District Court for the Northern District of Iowa.⁴⁰ Both parties filed motions for summary judgment.⁴¹ The District Court granted Garret's motion for summary judgment holding that the services required by Garret did not fall within the "medical services" exclusion of the IDEA and were required to be provided by the school district.⁴² The United States Court of Appeals, Eighth Circuit, affirmed the District Court's decision.⁴³ The Court of Appeals stated that its decision was controlled by the test established by the Supreme Court in *Tatro*.⁴⁴

The Court of Appeals applied the *Tatro* "physician-based test"⁴⁵ to determine whether Garret's continuous nursing services were "supportive" in nature.⁴⁶ Finding that they were, the court next determined

35. See *Cedar Rapids*, 106 F.3d at 824.

36. See 34 C.F.R. §§ 300.16(a), (b)(4), b(11) (1998).

37. See *Cedar Rapids*, 119 S. Ct. at 996.

38. *Tatro*, 468 U.S. at 883.

39. See *Cedar Rapids*, 106 F.3d at 824. The high costs of Garret's services have been tremendous. During the seven-hour school day Garret's family "paid \$418.50 per hour for the 1993-1994 school year and \$22.00 per hour for 1994-1995 for the nursing services at school." Brief for Respondent, *Cedar Rapids*, 106 F.3d at 824. These high costs resulted in exhaustion of two medical insurance policies and personal funds. See *id.*

40. Both Garret and the Cedar Rapids Community School District filed motions for summary judgment. In an unpublished decision, the District Court for the Northern District of Iowa granted summary judgment in favor of Garret. See *Cedar Rapids*, 106 F.3d at 824.

41. See *id.*

42. See *id.*

43. See *id.* at 825.

44. See *id.* at 824.

45. Suh, *supra* note 15, at 1326.

46. By "supportive," the court must decide whether the services are nec-

whether the continuous nursing services could be excluded "as medical services beyond diagnosis and evaluation."⁴⁷ The Court of Appeals reasoned that since the services required by Garret were provided by a nurse and not a physician, they did not constitute medical services "other than for diagnostic and evaluation purposes" and were thereby not subject to the "medical services" exclusion of the IDEA.⁴⁸

The Court of Appeals, however, acknowledged the existence of several contrary decisions, showing that *Tatro* did not establish a bright-line test.⁴⁹ Several courts have held that full-time nursing services are *per se* enough to bring the services within the scope of the medical services exception of the IDEA.⁵⁰ The Court of Appeals dismissed these cases as "beyond the physician/nonphysician distinction the Supreme Court found in the statute and the regulations."⁵¹

B. The Supreme Court's Decision: *Tatro* Revisited

Justice Stevens, writing for the majority, looked to the statutory definition of the "related services" provision of the IDEA, the Court's prior decision in *Tatro*, "and the overall statutory scheme" in affirming the decision of the Court of Appeals.⁵² Justice Stevens further acknowledged that *Cedar Rapids* was not the first time the Court reviewed the scope of the "medical services" exclusion.⁵³ The Court's holding in *Tatro* that "the Secretary of Education had reasonably determined that the term 'medical services' referred only to services that

essary for Garret to attend school and benefit from the education provided. *Id.* at 825.

47. *Id.*

48. *Id.*

49. *See id.* The court cited to *Detsel v. Board of Educ.*, 637 F. Supp.1022 (N.D.N.Y. 1986), *aff'd*, 820 F.2d 587 (2d Cir. 1987), *cert. denied*, 484 U.S. 981, 108 S. Ct. 495, 98 L. Ed. 2d 494 (1987); *Granite Sch. Dist. v. Shannon M.*, 787 F. Supp. 1020 (D. Utah 1992); *Neely v. Rutherford County Sch.*, 68 F.3d 965 (6th Cir. 1995). In addition, the *Cedar Rapids* Court alluded that it did not necessarily agree with the Supreme Court's interpretation of the statute and regulations. Nevertheless, the Court of Appeals felt "bound by the Supreme Court's holding." *Cedar Rapids*, 106 F.3d at 825.

50. *See* Allan G. Osborne, Jr., *Where Will the Supreme Court Draw the Line Between Medical and School Health Services Under the IDEA?* 128 ED. LAW. REP. 559, Oct. 1998, available in 128 WELR 559.

51. *Cedar Rapids*, 106 F.3d at 825.

52. *Cedar Rapids*, 119 S. Ct. at 1000.

53. *See id.* at 997.

must be performed by a physician, and not to school health service”⁵⁴ was clear and directly applicable in *Cedar Rapids* as well.⁵⁵

The Cedar Rapids Community School District, however, did not ask the Court to expand the definition of “medical services” so far as to exclude those services Garret requires.⁵⁶ In other words, the District did “not argue that any of the items of care that Garret needs, considered individually, could be excluded from the scope of § 1401(a)(17).”⁵⁷ What the school district did ask the Court to consider was the overall character and extensive nature of the care Garret required.⁵⁸ To remedy the impact of such a case as Garret’s, the District proposed a test in which a series of factors would be considered, including: (1) the continuous nature of the care; (2) ability of school health personnel with respect to each service; (3) cost; and (4) consequences resulting from improper performance of the services.⁵⁹

The Court rejected the Cedar Rapids School District argument for a “balancing” or “multi-factor” test.⁶⁰ While recognizing the financial burden continuous services can impose, the Court held that higher cost does not mean services can be considered “more ‘medical.’”⁶¹ Such a balancing test lacks any legal support, statutory or regulatory.⁶²

II. DEVELOPMENT OF THE IDEA: CONGRESS AND THE COURTS

The Supreme Court noted in the now famous *Brown v. Board of Education*⁶³ decision, that “[e]ducation is perhaps the most important

54. *Id.*

55. *See id.*

56. *See id.* “As the ALJ concluded, most of the requested services are already provided by the District to other students.” *Id.*

57. *Cedar Rapids*, 119 S. Ct. at 998.

58. *See id.*

59. *See id.*

60. *See id.* at 1000. The multi-factor test proposed by the District focused on the character of the care provided to disabled students. Specifically, the District sought consideration of “[1] whether the care is continuous or intermittent, [2] whether existing school health personnel can provide the service, [3] the cost of the service, and [4] the potential consequences if the service is not properly performed” *Id.* (citing Brief for the Petitioner at 11).

61. *See id.* at 998.

62. *See Cedar Rapids*, 119 S. Ct. at 998.

63. 347 U.S. 483 (1954).

function of state and local governments.”⁶⁴ While *Brown* did not address the issue of equality in education for children with disabilities, it certainly set the stage.⁶⁵ Yet, for decades equal opportunity in education continued to elude children with disabilities.⁶⁶

A. Legislative Attempts to Improve Education for Disabled Children

In 1965, Congress enacted the Elementary and Secondary Education Act (ESEA)⁶⁷ as an attempt to improve education for low income children and children with special needs.⁶⁸ However, Congress later determined that “the existing programs [including the ESEA] were ineffective and lacked a strong central administrative body.”⁶⁹ As with many first attempts at progressively legislating new areas, it soon became clear to Congress that more was needed to improve education for children with disabilities.⁷⁰ Subsequent amendments to the ESEA corrected the deficiency by creating a grant program for states.⁷¹

In 1968, this nation saw a thirty-eight percent increase in the total number of programs for educating children with disabilities.⁷² Fortunately for millions of children with disabilities in the United States,⁷³ guaranteeing a “free appropriate public education” began to receive

64. *Id.* at 493.

65. See Boeckman, *supra* note 3, at 859 (discussing judicial support for the educational system).

66. One need only look at the Congressional findings made prior to enactment of the Education for All Handicapped Act of 1975 to discover the surprising statistics concerning how many disabled children in this country were not receiving appropriate educational services. See 20 U.S.C. § 1400(b).

67. Pub. L. No. 89-10, 79 Stat. 27 (1965), amended by Pub. L. No. 89-750, 80 Stat. 1204 (1966).

68. See Suh, *supra* note 15, at 1327.

69. *Id.* at 1321 (quoting S. Rep. No. 168, at 5 (1975), reprinted in 1975 U.S.C.C.A.N. 1425, 1429).

70. See Kovan, *supra* note 2, at 1868. One goal, which is not new to the latest legislative efforts at ensuring equality in education for disabled children, is the guarantee of a “free appropriate public education.” *Id.* However, the issue of financial responsibility for the education of disabled children persists. *Id.*

71. See Suh, *supra* note 15, at 1328.

72. See Boeckman, *supra* note 3, at 861.

73. See *id.* Specifically, the civil rights movement, among many other things, sought equal educational opportunities for minorities. See *id.*

greater legislative attention⁷⁴ due in part to continued victories in the civil rights movement. These victories furthered the goal of equal educational opportunities for disabled children as well as others.⁷⁵ In 1970, the ESEA was replaced with the Education of the Handicapped Act (EHA)⁷⁶ which combined all federal education programs designed for disabled children into one statute.⁷⁷ The EHA expanded the scope of special programs and increased federal financial assistance to the states.⁷⁸ Among the EHA's chief improvements was the creation of "special programs for the deaf-blind, regional resource centers, special preschool programs, and a National Media Center for the Handicapped."⁷⁹ More significantly, the EHA enhanced educational guarantees by requiring an "Individualized Education Program" (IEP) designed to meet the specific needs of each child with a disability.⁸⁰ The IEP was a critical step toward ensuring a specialized system capable of addressing educational needs of children with disabilities and thereby improving their overall educational benefits.

B. Judicial Involvement

1. Landmark Cases: PARC and Mills

Although Congress took early legislative steps⁸¹ to ameliorate the

74. *See id.*

75. Specifically, the civil rights movement, among many other things, sought equal educational opportunities for minorities. *See id.* at 861. However, the impact of the civil rights movement on education for disabled children is best characterized as setting a "precedent" for equality in educational opportunity, not to characterize all aspects of the civil rights movement as identical to the struggles faced by disabled children. *See id.*

76. *See* Pub. L. No. 91-230, §§ 601-62, 84 Stat. 175 (1970) (codified as amended at 20 U.S.C. §§ 1400-1491 (1994)).

77. *See id.*

78. *See* Kovan, *supra* note 2, at 1877; *See also* Suh, *supra* note 15, at 1328.

79. S. Rep. No. 634, at 90 (1970), *reprinted in* 1970 U.S.C.C.A.N. 2832.

80. *See* 20 U.S.C.A. § 1401(20) (Supp. 1999). The IEP must include: (a) present educational performance, (b) instructional goals and objectives, (c) specific educational services provided, (d) transition services, (e) date and duration of services, and (f) evaluation procedures. *See id.*

81. The earlier acts included the Elementary and Secondary Education Act of 1965 and the Education of the Handicapped Act of 1970.

neglect and exclusion of children with disabilities, the landmark cases of *Pennsylvania Association of Retarded Citizens v. Pennsylvania (PARC)*⁸² and *Mills v. Board of Education*⁸³ were the first cases to energize Congress to become "an active participant in education policy."⁸⁴

In *PARC*, the Pennsylvania Association for Retarded Children and the parents of thirteen developmentally disabled children brought a class action suit on behalf of all developmentally disabled children against the Commonwealth of Pennsylvania.⁸⁵ The plaintiffs sued in federal court alleging that Pennsylvania's compulsory education statutes⁸⁶ violated the children's right to due process and denied the children the right to an education.⁸⁷

The District Court questioned the rational basis for the complete exclusion of developmentally disabled children and concluded "that the plaintiffs [had] established a colorable claim under the Due Process Clause" and on equal protection grounds.⁸⁸ The Court approved a Consent Agreement between the plaintiffs and defendant in *PARC*, stating that it was "the Commonwealth's obligation to place each mentally retarded child in a free, public program of education and training appropriate to the child's capacity. . . ."⁸⁹ The Court deemed that while separation into a special class was permissible, total exclusion was not.⁹⁰

Within three months of the *PARC* decision, the United States Dis-

82. 343 F. Supp. 279 (E.D. Pa. 1972).

83. 348 F. Supp. 866 (D.D.C. 1972).

84. Suh, *supra* note 15, at 1329. See also *PARC*, 343 F. Supp. at 279; *Mills*, 348 F. Supp. at 866; Kovan, *supra* note 2, at 1873; Boeckman, *supra* note 3, at 862.

85. See *PARC*, 343 F. Supp. at 281-82.

86. For a concise description of the relevant statutes enacted under Pennsylvania law see generally Boeckman, *supra* note 3.

87. See *PARC*, 343 F. Supp. at 283, 297. The plaintiffs argued that the Pennsylvania statutes violated the due process clause because the statutes contained no "provision for notice and a hearing before a retarded person is either excluded from a public education or a change is made in his educational assignment within the public system." *Id.* at 283. Additionally, the plaintiffs argued that there existed no rational basis for the statutory presumption retarded children are uneducable and untrainable. See *id.*

88. *Id.*

89. *Id.* at 307.

90. See *id.* at 297.

strict Court in the District of Columbia was presented with a similar case.⁹¹ In *Mills*, an action was brought on behalf of seven children who were denied access to the District of Columbia public schools because of behavioral, mental, and emotional problems.⁹² As in *PARC*, the court found that the school district's failure to provide any educational services violated the plaintiffs' rights under the Due Process Clause and Fifth Amendment of the Constitution.⁹³

The court also examined the school district's financial concerns regarding the provision of expensive educational services⁹⁴ and concluded these concerns do not limit the requirement to provide the services. The court required the school district "to provide a publicly-supported education for these 'exceptional' children."⁹⁵

By the summer of 1975, twenty-eight states filed forty-six lawsuits to determine the rights of students with disabilities with respect to educational opportunities.⁹⁶ The decisions in *PARC*, *Mills*, and others soon caught the attention of lawmakers.⁹⁷ Congress realized that further legislative steps were necessary to achieve educational equality for disabled children.

2. *Legislative Improvements*

In 1975, Congress enacted the Education for All Handicapped Children Act (EAHCA)⁹⁸ to end what Congress deemed "the failure of state education systems to meet the educational needs of children with disabilities."⁹⁹ The stated purpose of the EAHCA was "to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for em-

91. See *Mills*, 348 F. Supp. at 866.

92. See *id.* at 868.

93. See *id.* at 875; see also Suh, *supra* note 15, at 1329.

94. The defendants claimed that relief for the plaintiffs in this case would not be possible unless Congress appropriated millions in additional funding to support services for the children or the Board of Education diverted millions of its own appropriated funds. See *Mills*, 348 F. Supp. at 875.

95. *Id.* at 876.

96. See Boeckman, *supra* note 3, at 863.

97. See *id.*

98. See 20 U.S.C. § 1401 (1994).

99. BONNIE POITRAS TUCKER, FEDERAL DISABILITY LAW § 14.1 (West 1994).

ployment and independent living.”¹⁰⁰

C. Current Law: The Individuals With Disabilities Education Act

In 1991, the EAHCA was amended and became known as the Individuals with Disabilities Education Act (IDEA).¹⁰¹ The IDEA's primary purpose is identical to the EAHCA: to ensure that all children with disabilities have access to a “free appropriate public education.”¹⁰² The IDEA represents the culmination of a half-century of litigation and federal legislative effort to assist disabled children with disabilities in the education arena. In order for a state to qualify for federal financial assistance under the IDEA,¹⁰³ the state must demonstrate a policy guaranteeing disabled children access to a “free appropriate public education”¹⁰⁴ and be submitted for approval to the Secretary of Education.¹⁰⁵

There has been little agreement in the courts concerning exactly what a school district must provide.¹⁰⁶ Specifically, courts have strug-

100. 20 U.S.C. § 1400(d) (Supp. 1994).

101. H.R. Rep. No. 102-198, at 1 (1991), *reprinted in* 1991 U.S.C.C.A.N. 310.

102. 20 U.S.C. § 1400(c) (1994). The IDEA has existed, albeit under different names, for the last three decades. The Elementary and Secondary Education Act of 1965, the Education of the Handicapped Act of 1970 and the Education for All Handicapped Children Act all emphasized special education and sought the common goal of a “free appropriate public education” for all disabled children. *See Dannenberg, supra* note 17, at 631.

103. *See* 20 U.S.C. § 1412(1) (Supp. 1999).

104. *Id.*

105. *See* 20 U.S.C. § 1401(a) (Supp. 1998). The IDEA defines the term “free appropriate public education” as:

special education and related services that have been provided at public expense, under public supervision and direction, and without charge, (B) meet the standards of the State educational agency, (C) include an appropriate preschool, elementary, or secondary school education in the State involved, and (D) are provided in conformity with the individualized education program required. . . .

Id.

106. *See generally* McKenzie v. Jefferson, 566 F. Supp. 404 (D.D.C. 1983) (holding that the student's hospitalization care did not fall within the related services provision of the IDEA); Timothy W. v. Rochester Sch. Dist., 875 F.2d 954 (1st Cir. 1989), *cert. denied*, 493 U.S. 983 (1989) (holding that the requested services fell within the statutory definition of related services);

gled to decipher what "related services"¹⁰⁷ schools must provide to disabled students in order to guarantee a "free appropriate public education" under the IDEA.¹⁰⁸

D. Judicial Interpretation of the Statutory Language

The Supreme Court first examined the extent of "free appropriate public education" requirements in *Board of Education v. Rowley*.¹⁰⁹ Amy Rowley, a deaf student, requested a sign-language interpreter from the school district in addition to the hearing aid already provided.¹¹⁰ The school district consulted the district's Committee on the Handicapped prior to denying her request.¹¹¹ An action was brought alleging that the refusal to provide a sign-language interpreter denied Amy the right to a "free appropriate public education" as guaranteed by the EAHCA.¹¹² The Supreme Court found that the EAHCA's "requirement of a 'free appropriate public education' is satisfied when the state provides personalized instruction with suffi-

Detsel v. Board of Educ., 820 F.2d 587 (2nd Cir. 1987) (per curiam), *cert. denied*, 484 U.S. 981 (1987) (focusing on the "extent and nature" of the services required, the court ruled that the school district was not required to provide nursing services); *analyzed in* Suh, *supra* note 15.

107. The IDEA defines "related services" as:

Transportation, and such developmental, corrective, and other supportive services (including speech pathology and audiology, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, counseling services, including rehabilitation counseling and medical services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a child with a disability to benefit from special education, and includes the early identification and assessment of disabling conditions in children.

20 U.S.C. § 1401(a)(17) (1994).

108. *See* Suh, *supra* note 15, at 1323.

109. 458 U.S. 176 (1982). While the *Rowley* Court addressed the requirement of "free appropriate public education" under the EAHCA, it is important to note that the requirement is a central feature of the IDEA as well. *See* Boeckman, *supra* note 3, at 865.

110. *See Rowley*, 458 U.S. at 185. Amy's IEP provided that she would be in a regular classroom, use a hearing aid, receive tutoring for the deaf for one hour each day, and speech therapy three hours per week. *See id.* at 184.

111. *See id.* at 185.

112. *See id.* at 177. An interpreter was in fact placed in Amy's kindergarten class for two weeks and the interpreter reported that such services were not required. *See id.* at 184.

cient support services to permit the handicapped child to benefit educationally from that instruction."¹¹³ The Court developed a two-part inquiry to examine the adequacy of an educational program for children with disabilities.¹¹⁴

In the first step, the Court inquires as to whether the state meets the procedures established in the EAHCA.¹¹⁵ Secondly, the Court determines whether "the individualized educational program developed through the Act's procedures [is] reasonably calculated to enable the child to receive educational benefits."¹¹⁶ The Court further held in *Rowley* that if these two prongs are satisfied, "the State has complied with the obligations imposed by Congress and the courts can require no more."¹¹⁷ Thus, while a school district has an obligation under the Act to provide some services to disabled children not provided to other children, it does not have the obligation to provide every possible related service.¹¹⁸

E. The "Medical Services" Exclusion: Irving Independent School District v. Tatro

Irving Independent School District v. Tatro provided the Supreme Court with another opportunity to refine and expand the interpretation of the statutory language of the EAHCA.¹¹⁹ The primary question considered by the Court in *Tatro* was whether the "related services" provision required the school district to provide the service of clean intermittent catheterization (CIC).¹²⁰

Amber, the Respondent's daughter, was an eight-year-old girl born with spina bifida.¹²¹ Due to her condition, Amber suffered "from orthopedic and speech impairments and a neurogenic bladder, which

113. *Id.*

114. See Suh, *supra* note 15, at 1324.

115. See *Rowley*, 458 U.S. at 206-07.

116. *Id.*

117. *Id.*

118. See Suh, *supra* note 15, at 1325.

119. See *Tatro*, 468 U.S. at 883.

120. Clean Intermittent Catheterization is the "[i]ntroduction of a catheter through the urethra into the bladder for withdrawal of urine." TABER'S CYCLOPEDIA MEDICAL DICTIONARY 306 (16th ed. 1989). The procedure is described as "simple" and able to be "performed in a few minutes by a layperson with less than an hour's training." *Tatro*, 468 U.S. at 885.

121. See *Tatro*, 468 U.S. at 885.

prevent[ed] her from emptying her bladder voluntarily.”¹²² The school district, in consultation with Amber’s parents, developed an IEP as required under the Education of the Handicapped Act (EHA) that was in force at the time.¹²³ However, the program did not make provisions for the administration of CIC to Amber.¹²⁴ After reviewing the statutory definitions of “related services” and “free appropriate public education,” the Court developed the *Tatro* “physician-based test.”¹²⁵

To determine if “a service is a related service,” the first inquiry centers around “whether the service is a ‘supportive service[] . . . required to assist a child with a disability to benefit from special education.’”¹²⁶ Essentially, a court asks whether the absence of a specific service would prevent a child from attending school and thus deny him or her the benefits of a special education.¹²⁷ If a court holds in the affirmative, it must then consider whether the provided support service “is excluded from [the] definition [of a related service] as a ‘medical servic[e]’ serving purposes other than diagnosis or evaluation.”¹²⁸ Hence, if the support service is deemed a “medical service,” it falls within the exception and the school district will not be required to provide such service.

The *Tatro* Court relied on the IDEA’s statutory definition of “medical service”¹²⁹ and concluded that since CIC did not require the services of a physician and was necessary to assist the child “to benefit from special education,” it constituted a “related service.” As such, the CIC remained the responsibility of the school district to provide.¹³⁰

In reaching this conclusion, the *Tatro* Court also considered the regulations of the Department of Education.¹³¹ Specifically, the Court

122. *Id.*

123. *See id.* at 885-86.

124. *See id.* at 886.

125. Suh, *supra* note 15, at 1325.

126. *Cedar Rapids*, 106 F.3d at 824 (citing *Tatro*, 468 U.S. at 890).

127. *See Tatro*, 468 U.S. at 890.

128. *Id.*

129. Medical service is defined as “services provided by a licensed physician to determine a child’s medically related disability that results in the child’s need for special education and related services.” 34 C.F.R. § 300.16(b)(4) (1999); *see also Tatro*, 468 U.S. at 890; Suh, *supra* note 15, at 1325.

130. *See Tatro*, 468 U.S. at 887-88.

131. *See id.* at 891-92. The definition of “related services” is now codified

considered the definition of "school health services" as defined by the Department of Education as "services provided by a qualified school nurse or other qualified person."¹³² Further, "medical services" was defined under the regulations as "services provided by a licensed physician."¹³³ Accordingly, the Court held the Secretary's interpretation of the statute as reasonable and consistent with Congressional intent.¹³⁴

In light of the Supreme Court's interpretation of what constitutes a "related service," and what is excludable as a "medical service," *Tatro* proved to be the key case for the court in *Cedar Rapids Community School District v. Garret F.*

III. CEDAR RAPIDS: AFFIRMING PRECEDENT OR JUDICIAL DEFERENCE?

A. The Standard Set by *Tatro*

A proper analysis of any statute necessitates a reading of its language. At the center of *Cedar Rapids* was the term "medical." In *Tatro*, the Irving Independent School District offered a common sense definition of "medical services" by arguing that a service may constitute a "medical service" despite the fact that it is "provided by a nurse or trained layperson."¹³⁵ This interpretation of "medical service" was based on Texas law,¹³⁶ and under the law, CIC was restricted to physician prescription and supervision.¹³⁷ The Court, however, noted that the school district nurses in *Tatro* were "authorized to dispense oral medications and administer emergency injections in accordance with a physician's prescription."¹³⁸ The Court stated, "[i]t would be strange indeed if Congress, in attempting to extend special services to handicapped children, were unwilling to guarantee them services of a kind that are routinely provided to the nonhandicapped."¹³⁹ Thus, a school

under 34 C.F.R. § 300.24 (1999).

132. *Tatro*, 468 U.S. at 892.

133. *Id.* The "medical services" definition is now codified under 34 C.F.R. 300.24(b)(4) (1999).

134. *See Tatro*, 468 U.S. at 892.

135. *Id.* at 883.

136. *See id.* at 893.

137. *See id.*

138. *Id.*

139. *Id.* at 893-94.

district cannot claim the "medical services" exclusion under the IDEA for services that are routinely provided to nonhandicapped individuals. As a result, the Supreme Court found the school district's argument "unconvincing," "anomalous," and conflicting with Congress' intent.¹⁴⁰ However, questions regarding the meaning of the "medical services" exclusion remained when the Supreme Court granted certiorari in *Cedar Rapids*.

1. *A Search for the Plain Meaning or Dictionary Games?*

TABER'S CYCLOPEDIC MEDICAL DICTIONARY defines "medical" as pertaining "to medicine or the study of the art and science of caring for those who are ill."¹⁴¹ This definition suggests that one who cares for the ill is providing a "medical" service. This basic definition supports a broader interpretation of the "medical services" exclusion to include services provided by a school nurse.¹⁴²

To support a broader interpretation, the Cedar Rapids Community School District argued that the "IDEA is an education law" and that the plain language of the IDEA requires that "all medical services, not just those directly provided by a physician, . . . be excluded from the school district's responsibility."¹⁴³ Further, the school district urged that the intensive nature of the services required by Garret mandated a "common sense" definition of "medical services." It argued the Court should look to a "series of factors" to determine whether health care services are the sole responsibility of the school district.¹⁴⁴ The majority in *Cedar Rapids*, however, was very clear in its refusal to overturn prior case law or engage in the act of rewriting regulations.¹⁴⁵

140. See *Tatro*, 468 U.S. at 893.

141. TABER'S CYCLOPEDIC MEDICAL DICTIONARY 306 (16th ed. 1989).

142. Congress provides contrary definitions for the term "medical" in other statutes. For example, the Internal Revenue Code, Title 26 of the United States Code Section 213(d)(1) states "'medical care' means amounts paid (A) for the diagnosis, cure, mitigation, treatment, or prevention of disease, or for the purpose of affecting any structure or function of the body." 26 U.S.C. § 213(d)(1)(A) (1988). The Cedar Rapids School District also looked to Title XIX of the Social Security Act which defined the term "medical assistance" to include services other than those provided for by a physician. See also Petitioner's Brief at 11.

143. Brief for Petitioner at 10, *Cedar Rapids*, 106 F.3d at 822.

144. See *id.* at 10-11.

145. See *Cedar Rapids*, 119 S. Ct. at 998.

2. Action by Congress and the Secretary of Education: The Status Quo

The Court's holding in *Cedar Rapids* is a logical result in light of the standard of statutory construction set out in *Chevron v. Natural Resources Defense Council*.¹⁴⁶ Under *Chevron*, a review of an agency's interpretation of a statute necessitates two parts: (1) if congressional intent is clear in the statute, the Court and the agency must give deference to this intent, and (2) if Congressional intent is ambiguous or non-existent, then the Court must look to the administrative interpretation and decide if "the agency's answer is based on a permissible construction of the statute."¹⁴⁷ If the agency's interpretation is reasonable, a court will defer to the agency.¹⁴⁸

Since the IDEA is relatively silent with respect to the "medical services" exclusion, the Court looked to the Secretary of Education's determination that "medical services" meant those services performed only by a physician.¹⁴⁹ While holding that the Secretary's construction is permissible, the Court noted the uncertainty with which the Department of Education viewed the IDEA.¹⁵⁰ It recognized the Secretary's authority to adopt regulations defining "medical services" and the fact that the Secretary had not recently chosen to do so.¹⁵¹ In *Cedar Rapids*, the Court also pointed out that the Secretary of Education supported affirming the Court of Appeals' decision in a Brief for the United States as *Amicus Curiae*.¹⁵²

3. An Early Attempt to Define "Medical Services"

Given that the Court showed deference to the Secretary of Education's authority to adopt regulations defining "medical services," it is only reasonable to look at the subsequent history of the IDEA. Before

146. 467 U.S. 837, 842-43 (1984).

147. *Id.*

148. *See id.*

149. *See Cedar Rapids*, 119 S. Ct. at 998. Support for the "physician-nonphysician" test can be found in 34 C.F.R. § 300.24 which defines "medical services" as "services provided by a licensed physician to determine a child's medically related disability that results in the child's need for special education and related services." *Id.*

150. *See Cedar Rapids*, 119 S.Ct. at 998.

151. *See id.*

152. *See id.*

Tatro was decided, the Department of Education issued proposed regulations addressing the definition of "medical services."¹⁵³ There existed a recognized need to reduce the financial and administrative burden of the regulations.¹⁵⁴

The proposed regulations sought to alter the "medical services" exclusion to include "services relating to the practice of medicine."¹⁵⁵ Further, the proposed regulations provided for a guideline to allow public agencies to seek determinations from state medical licensing authorities on whether a service is considered a "medical service."¹⁵⁶ Later, on November 3, 1982, the Secretary withdrew these proposed regulations in light of public comment. In 1983, section 1407(b) was added to the IDEA to prohibit the Secretary from lessening the procedural or substantive protections provided to disabled children under the Act. Perhaps, as pointed out by the Respondent in *Cedar Rapids*, this reflects "congressional confirmation that the current 'related services' regulation reasonably interprets congressional intent."¹⁵⁷

*B. Examining the Severity of the Disability as a Factor in
Considering the Extent of the Medical Services Exclusion*

Despite the strong precedent set by the Supreme Court's decision in *Tatro*, lower courts continued to draw a line when the services re-

153. See Assistance to States for Education of Handicapped Children, 47 Fed. Reg. 33836 (1982) (to be codified at 34 C.F.R. pt. 300) (proposed Aug. 4, 1982).

154. The Summary of Proposed Rulemaking stated:

The Secretary proposes to amend the regulations for the Assistance to States for Education of Handicapped Children program. The Secretary believes that changes proposed in this document will result in regulatory requirements which adhere more closely to the language of the statute and its legislative history. The proposed regulations are designed: (1) To reduce fiscal and administrative burdens on recipients while implementing statutory protections that ensure the availability of a free appropriate public education to all handicapped children, and (2) to address various problems that have arisen in the implementation of the program since the current regulations became effective in October 1977. The proposed amendments will also make the regulations clearer and easier to understand.

Assistance to States for Education of Handicapped Children, 47 Fed. Reg. 33836 (1982) (to be codified at 34 C.F.R. pt. 300) (proposed Aug. 4, 1982).

155. *Id.*

156. See *id.*

157. Brief for Respondent at 23, *Cedar Rapids*, 106 F.3d at 822.

quired became "extraordinary medical needs and their costs [became] too burdensome."¹⁵⁸ These lower court decisions advocated the need for a balancing test to determine when required services cross the line into "medical services." As the Court first noted in *Rowley* and restated in *Tatro*, "Congress sought primarily to make [meaningful] public education available to handicapped children."¹⁵⁹ This is a theme that has remained constant throughout all litigation involving the right of disabled children to a "free appropriate public education."

Cedar Rapids was not the first opportunity a court has had to consider the severity of a student's disability.¹⁶⁰ In 1986, the United States District Court for the Northern District of New York considered a case with facts similar to those in *Cedar Rapids*. *Detsel v. Board of Education of the Auburn Enlarged City School District*¹⁶¹ involved Melissa, a seven-year-old girl, who required constant respirator assistance.¹⁶² In *Detsel*, the school district refused to provide her with continuous nursing services arguing, as the Cedar Rapids Community School District did, that whether or not "a supportive service is a medical service is a matter of degree."¹⁶³ The services required for Melissa in *Detsel* closely resembled medical services because Melissa's vital signs required monitoring, she needed to be provided medication, and she required a procedure to clear her lungs of fluid.¹⁶⁴ Thus, the school district in *Detsel*, as in *Cedar Rapids*, argued for what amounted to a balancing test.¹⁶⁵ The district court in *Detsel*, although considering the Supreme Court's opinion in *Tatro*,¹⁶⁶ agreed with the school district and held that the EAHCA did not require the school district to "pro-

158. Suh, *supra* note 15, at 1326.

159. *Tatro*, 468 U.S. at 891.

160. See *Detsel*, 637 F. Supp. at 1022, 1023. Additionally, one common theme throughout all cases cited in this Note is the fact that the respective school districts resisted the requirement to provide support services based on the individual's specific disability.

161. 637 F. Supp. 1022 (N.D.N.Y. 1986).

162. See *id.* at 1023.

163. *Id.* at 1025.

164. See *id.* Melissa's vital signs required monitoring, administration of medication through a tube, and "a procedure known as 'P, D and C' which calls for the ingestion of saline solution by the child into her lungs; the nurse subsequently strikes her about the lungs for four minutes and then suctions out any mucus collected in her lungs." *Id.* at 1024.

165. See *Detsel*, 637 F. Supp. at 1022; *Cedar Rapids*, 106 F.3d at 822.

166. See *Detsel*, 637 F. Supp. at 1022.

vide a severely disabled child with constant, in-school nursing care."¹⁶⁷

The reasoning of the district court in *Detsel* was clear: requiring a school district to provide such extensive services would be too great a burden and contrary to the Supreme Court's finding in *Tatro*.¹⁶⁸ Namely, that "the Secretary could reasonably have concluded that [the statute] was designed to spare schools from an obligation to provide a service that might well prove unduly expensive and beyond the range of their competence."¹⁶⁹

Not all courts, however, placed great emphasis on the burden school districts face for providing support services to severely disabled children. Such an emphasis would be key only for those desiring a balancing approach. For example, in *Timothy v. Rochester School District*,¹⁷⁰ the Court of Appeals for the First Circuit examined a case involving a child with multiple disabilities and profound retardation,¹⁷¹ a situation which appeared to be far worse than Melissa's situation in *Detsel*.¹⁷² The court held that "[t]he statutory language of the Act, its legislative history, and the case law construing it, mandate that all handicapped children, regardless of the severity of their handicap, are entitled to a public education."¹⁷³

C. Economic Factors and the IDEA

Arguably, a main policy consideration against a narrow definition of the "medical services" exclusion is an economic one. The costs incurred by a school district providing support services to any child with a disability is often proportionately related to the severity of the disability.¹⁷⁴ The more extensive the disability, the more extensive the re-

167. *Id.* at 1027.

168. *See Tatro*, 468 U.S. at 883.

169. *Id.* at 892.

170. 875 F.2d 954 (1st Cir. 1989).

171. Timothy W. was born two months prematurely with severe respiratory problems, and shortly thereafter experienced an intracranial hemorrhage, subdural effusions, seizures, hydrocephalus, and meningitis. As a result, Timothy is multiply handicapped and profoundly mentally retarded. He suffers from complex developmental disabilities, spastic quadriplegia, cerebral palsy, seizure disorder and cortical blindness. *See id.* at 955-56.

172. *See Detsel*, 820 F.2d at 587.

173. *Timothy*, 875 F.2d at 972-73.

174. *See Osborne*, *supra* note 50, at 559.

quired services and related costs will likely be.

As currently interpreted by the Court in *Cedar Rapids*, the "medical services" exclusion is held to mean only those services provided by a licensed physician. While issues such as nature of the service and required specialized training of the attendant certainly affect the costs and subsequent degree of burden on a given school district, they are not factors to be considered.¹⁷⁵ Thus, while the door to education is open to any disabled child capable of receiving support services from anyone other than a licensed physician, such an interpretation could prove costly to many school districts and to the education system as a whole. Funding required to assist disabled children is continually the cornerstone of debate and allocation by some school districts may come at the expense of non-disabled children.¹⁷⁶

The statutory language of the IDEA, requires "related services" to be provided to a disabled student free of charge at public expense.¹⁷⁷ Early on, funding was not a significant factor for the schools.¹⁷⁸ However, due to the increasing requirements under the related services provision of the IDEA, and the increasing number of students in need of special education, school systems are beginning to feel the economic strain.¹⁷⁹ The National Center for Education Statistics estimates expenditures for public education to be \$6,407 per student during the 1998-99 school year.¹⁸⁰ A child with a disability, depending on the severity/extent of required services, could easily exceed this amount. Yet, while cost can prove to be a real burden for some school districts,¹⁸¹ states do receive federal funds under the IDEA,¹⁸² so long as a "State shall demonstrate to the Secretary that . . . [t]he State has in

175. *See id.*

176. *See* Dannenberg, *supra* note 17, at 632.

177. *See* 20 U.S.C.A. § 1401(a)(18)(A) (West 1998).

178. *See* Boeckman, *supra* note 3, at 869.

179. *See* 20 U.S.C. § 1400(a)(17) (1994); *see also* Boeckman, *supra* note 3 at 869-70.

180. *See* National Center for Education Statistics, *Public Elementary and Secondary Education Statistics, School Year 1998-99*, Department of Education (Apr. 1999).

181. For a sampling of cases which provide an overview of the economic struggles some schools face, *see* Boeckman, *supra* note 3, at 869-70. *See also* *PARC*, 343 F. Supp. at 301 (stating that the economic "burden of implementing this settlement falls primarily upon the Commonwealth, not the local districts or intermediate units").

182. *See* 20 U.S.C.A. § 1412(1) (West 1998).

effect a policy that assures all handicapped children the right to a free appropriate public education."¹⁸³ In addition, the IDEA provides for "grants to local educational agencies or intermediate educational units to pay part or all of the cost of altering existing buildings and equipment."¹⁸⁴ The flaw in the economic argument in favor of a broader definition of medical services is the language of the IDEA itself, which states that:

State and local educational agencies have a responsibility to provide education for all handicapped children, but present financial resources are inadequate to meet the special educational needs of handicapped children; and it is in the national interest that the Federal Government assist State and local efforts to provide programs to meet the educational needs of handicapped children in order to assure equal protection of the law.¹⁸⁵

In addition, the 1997 Amendments to the IDEA included a funding formula provision¹⁸⁶ "to ensure that each state receives no less than the amount received in the prior year."¹⁸⁷ Given the fact that Congress has and will continue to take into account funding concerns of states and school districts, it is reasonable to conclude that the Supreme Court has apparently left the resolution of economic issues for state and federal legislatures. Whether or not federal and/or state funds are enough to sustain a given school district is dependent upon factors such as the number of disabled children, the severity of the disabilities, and the financial strength of the school district in question.

IV. CONCLUSION

Absent further action by Congress, the meaning of the "medical services" exclusion has been conclusively interpreted to mean only those services provided by a licensed physician. While the economic burden of this decision may rear its head in the future, there is little doubt that the establishment of a bright-line rule in *Cedar Rapids* will

183. *Id.*

184. 20 U.S.C.A. § 1406(a) (West 1998).

185. 20 U.S.C.A. § 1400(b)(8-9) (West 1998).

186. See Dixie Snow Huefner, *The Individuals With Disabilities Education Act Amendments of 1997*, 122 ED. LAW. REP., Mar. 1998, available in 122 WELR 1103.

187. *Id.*

improve the opportunity for all disabled children to receive a "free appropriate public education."¹⁸⁸ Finally, the Court's ruling in *Cedar Rapids* will facilitate consistency in the courts concerning interpretation of the "medical services" exclusion. As previously recognized by scholars examining this issue, those who remain unsatisfied with the Court's decision in *Cedar Rapids* should now concentrate their efforts on Congress.

188. Brief for Petitioner at 11, *Cedar Rapids*, 106 F.3d at 822.

